IN THE

Supreme Court of the United States

October Term, 1978.

No. 78-1802.

AMERICAN MOTORS SALES CORPORATION,
Petitioner,

v.

DIVISION OF MOTOR VEHICLES OF THE COMMONWEALTH OF VIRGINIA
and
VERN L. HILL,
Commissioner of the Division of Motor Vehicles of the Commonwealth of Virginia,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

BRIEF FOR RESPONDENTS, VIRGINIA DIVISION OF MOTOR VEHICLES AND VERN L. HILL, IN OPPOSITION.

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TABLE OF CONTENTS.

TABLE OF AUTHORITIES.

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BRIEF FOR RESPONDENTS, VIRGINIA DIVISION OF MOTOR VEHICLES AND VERN L. HILL, IN OPPOSITION.

Respondents, the Division of Motor Vehicles of the Commonwealth of Virginia and Vern L. Hill, Commissioner of the Division of Motor Vehicles ("Virginia"), respectfully request that the Court deny the Petition for Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW.

The opinion of the Court of Appeals for the Fourth Circuit is reported at 592 F. 2d 219 (4th Cir. 1979). The order of the Court of Appeals denying the Petition for Rehearing and Suggestion for Rehearing *en banc* was

issued March 7, 1979, and is reproduced in the appendix to the Petition for Writ of Certiorari ("App") at 32. The opinion of the United States District Court for the Eastern District of Virginia is reported at 445 F. Supp. 902 (E. D. Va. 1978).

JURISDICTION.

Jurisdiction has been invoked pursuant to 28 U. S. C. § 1254(1) (1966).

QUESTION PRESENTED.

Whether VA. CODE § 46.1-547(d) [1] (Cum. Supp. 1978), which prescribes an administrative procedure regulating intrabrand competition in the establishment of additional dealerships for a particular line-make of motor vehicles in a given trade area within the state, violates the Commerce Clause of the United States Constitution.[2]

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1. VA. CODE § 46.1-547(d) (Cum. Supp. 1978) provides:

> It is unlawful for any manufacturer, factory branch, distributor or distributor branch, or any field representative, officer, agent, or any representative whatsoever of any of them:
>
> . . . (d) to grant an additional franchise for a particular line-make of motor vehicle in a trade area already served by dealer or dealers in that line-make unless the franchisor has first advised, in writing, such other dealers in the line-make in the trade area; provided that no such additional franchise may be established in the trade area if the Commissioner has determined, if requested by any party within 30 days after receipt of the franchisor's notice of intention to establish the additional franchise, and after a hearing on the matter, that there is reasonable evidence that after the grant of the new franchise, the market will not support all the dealerships in that line-make in the trade area; provided, further, that a reopening of a franchise in a trade area that has not been in operation for more than one year, shall be deemed the establishment of a new franchise subject to the terms of this subsection . . . .

2. U. S. CONST., art. I, § 8 provides in pertinent part:

> The Congress shall have Power . . . [t]o regulate Commerce . . . among the several States . . . .

STATEMENT OF THE CASE.

American Motors Sales Corporation ("AMSC"), a Delaware corporation, with its principal place of business in Michigan, and Early AMC, Inc. ("Early") [3] brought suit in the District Court challenging the constitutionality of VA. CODE § 46.1-547(d) (Cum. Supp. 1978) ("statute").[4]

The challenged statute is directed at the placement by motor vehicle manufacturers or distributors of additional dealerships for a given line-make of motor vehicles in a trade area already served by existing franchise dealers in the same line-make. When a manufacturer or distributor proposes to add additional dealers in a particular trade area, the statute affords existing dealers in that line-make in the trade area prior notice of the manufacturer's or distributor's plans. The statute provides an opportunity for a hearing before the Commissioner of Motor Vehicles of Virginia ("Commissioner") or his designee prior to the grant of additional franchises. The Commissioner is authorized to deny the grant of additional franchises only if, on the basis of the hearing record, he determines that there is reasonable evidence that with the addition of another franchise "the market will not support all the dealerships in that line-make in the trade area." *Id.*

Hearings conducted under the statute are subject to the procedural guarantees established by the Virginia Administrative Process Act, VA. CODE tit. 9, ch. 1.1:1, and the Virginia Motor Vehicle Dealer Licensing Act, VA. CODE § 46.1-550.1. Under the Administrative Process Act, the

3. Early is not a party to the Petition since it was granted a Jeep franchise by AMSC on June 5, 1978.

4. P. D. Waugh & Co. and the Virginia Dealer Association ("VADA") intervened in the District Court on behalf of defendants and participated as a party before the Court of Appeals. Although VADA continues to defend the constitutionality of the statute, P. D. Waugh, having sold its automobile franchise on April 27, 1978, is not a party to the Petition.

burden of persuasion is on a protesting party. VA. CODE § 9-6.14:12.C. All sides have the right to counsel and the right to cross-examine. *Ibid.* Decisions are required to be made "with dispatch." *Ibid.* Decisions of the Commissioner are subject to state judicial review. VA. CODE §§ 9-6.14:6 & 46.1-550.1.

In 1975, AMSC notified P. D. Waugh & Co. ("Waugh"), the sole Jeep dealership in the Orange, Virginia market area, that it intended to grant a Jeep franchise to Early, a potential competitor of Waugh in the sale of Jeeps in the Orange market. Early's Jeep franchise would have been an "additional franchise" within the meaning of the statute.

Pursuant to the statute, Waugh notified the Commissioner and requested a hearing to determine whether the market would support both dealerships.

A hearing was held before a hearing officer designated by the Commissioner. The hearing included testimony on the relevant geographic and product markets. All parties had an opportunity to examine and cross-examine witnesses. The hearing examiner determined that the trade area could support the two dealerships. The Commissioner, however, after a review of the record, rejected the hearing officer's conclusion and pursuant to the statute prohibited AMSC from granting Early an additional franchise in the trade area. Neither AMSC nor Early sought review of the Commissioner's decision in state court as provided by the statute and the Virginia Administrative Process Act.

On November 5, 1976, AMSC filed a complaint in the District Court against Virginia seeking a permanent injunction against the enforcement of the statute. The complaint challenged the statute under the Supremacy Clause, the Due Process and Equal Protection Clauses of the

Fourteenth Amendment, and the Commerce Clause of the United States Constitution. On cross motions for summary judgment, the District Court held that the prevention of destructive competition was not a legitimate local purpose under the Commerce Clause and that the state could prevent unfair trade practices involving the establishment of additional dealerships by imposing less restrictive burdens on interstate commerce.[5]

The Court of Appeals reversed on the basis of this Court's holdings in *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 99 S. Ct. 403 (1978), and *Exxon Corp. v. Governor of Maryland*, 437 U. S. 117 (1978).[6]

5. Accordingly, the District Court did not consider other grounds for AMSC's challenge to the statute.

6. Both decisions were rendered subsequent to the decision of the District Court.

REASONS FOR DENYING THE WRIT.

A. The Court of Appeals Gave Full Consideration to the Issues and Decided Them Correctly Under This Court's Recent Decisions.

AMSC's challenge to the constitutionality of the statute was correctly tested by the Court of Appeals under the standards enunciated by this Court in *Great Atlantic & Pacific Tea Co. v. Cottrell*, 424 U. S. 366, 371-72 (1976), and *Pike v. Bruce Church, Inc.*, 397 U. S. 137, 142 (1970).[7]

Pursuant to the standards enunciated by this Court, the Court of Appeals found that:

1. The statute promoted a legitimate local purpose;
2. The statute treated interstate and intrastate commerce evenhandedly; and
3. The burden imposed on interstate commerce was not excessive when balanced against the state's interest.

1. Legitimate Local Purpose.

In determining that the statute promoted a legitimate local purpose, the Court of Appeals was guided by this

7. The standard applied by the Court of Appeals for determining the validity of the statute under the Commerce Clause was stated as follows:

> Where the statute regulates evenhandedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits . . . . If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities. 592 F. 2d at 222; App. at 25, citing 397 U. S. at 142.

Court's decision in *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 99 S. Ct. 403 (1978).[8] The Court of Appeals stated:

> The recent decision in *New Motor Vehicle Board v. Orrin W. Fox Co.*, 99 S. Ct. 403 (1978) simplifies our resolution of the first question. There, the Court considered the validity of a California statute similar in many respects to the Virginia statute and the statutes adopted by 15 other states. See 99 S. Ct. at 408 n. 7. Noting the "disparity in bargaining power between automobile manufacturers and their dealers," the Court observed that the franchise regulation "protects the equities of existing dealers by prohibiting automobile manufacturers from adding dealerships to the market area of its existing franchisees, where the effect of such intra-brand competition would be injurious to the existing franchisees and to the public interest." 99 S. Ct. at 407-08. The Court identified the purpose of such laws as "the promotion of fair dealing and the protection of small business." 99 S. Ct. at 408 n. 7. It then held that the state legislature "was empowered to subordinate the franchise rights of automobile manufacturers to the conflicting rights

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8. *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 99 S. Ct. 403 (1978) involved a challenge to the California Automobile Franchise Act, CAL. VEH. CODE ANN. §§ 3062-63 (West Supp. 1978), under the Due Process Clause of the United States Constitution and the Sherman Act, 15 U. S. C. § 1 (1973). The Court observed that:

> The disparity in bargaining power between automobile manufacturers and their dealers prompted Congress and some 25 states to enact legislation to protect retail car dealers from perceived abusive and oppressive acts by the manufacturers. 99 S. Ct. at 407. (citations omitted)

The statute challenged in this petition was among the statutes noted by the Court as being similar to the California statute challenged in *Fox*. *See*, 99 S. Ct. at 908 n. 7.

of their franchisees where necessary to prevent unfair or oppressive trade practices." 99 S. Ct. at 411.

The Virginia statute serves the same public interest identified by the Court in *Orrin W. Fox Co.* 592 F. 2d at 222; App. 25-26.

2. Evenhandedness.

In determining that the statute treated interstate and intrastate competition evenhandedly, the Court of Appeals found that the statute made no distinction between the manufacturers that produce automobiles within the state and those that do not. 592 F. 2d at 223; App. 26. Accordingly, the Court held that the statute did not discriminate against interstate commerce under the standards set forth in *Breard v. Alexandria*, 341 U. S. 622, 633-41 (1951), and *Panhandle Eastern Pipe Line Co. v. Michigan Public Service Comm'n*, 341 U. S. 329, 336-37 (1951). 592 F. 2d at 223; App. 27. The statute was held by the Court of Appeals to regulate interstate and intrastate commerce evenhandedly. The Court of Appeals further distinguished the two cases upon which petitioner places major reliance (Pet. at 9-12), *H. P. Hood & Sons, Inc. v. Du Mond*, 336 U. S. 525 (1949), and *Buck v. Kuykendall*, 267 U. S. 307 (1925), on the grounds that the statute regulated interstate and intrastate commerce evenhandedly and furthered a legitimate local interest. 592 F. 2d at 223 n. 5; App. 27.

3. No Unconstitutional Burden.

The Court of Appeals determined that the burden imposed by the statute on interstate commerce was not excessive when balanced against the state's interest. In reaching this conclusion, the Court of Appeals relied on this Court's opinion in *Exxon Corp. v. Governor of Maryland*, 437 U. S. 117 (1978). The Court of Appeals rejected petitioner's argument that the statute was an unconstitutional obstruction of interstate commerce, stating that:

"The Supreme Court rejected essentially the same argument in *Exxon Corp. v. Governor of Maryland.*" (citation omitted). 592 F. 2d at 223; App. 27. The Court of Appeals declared that:

> Tested by the principles explained in *Exxon*, we conclude that the Virginia statute imposes no unconstitutional burden on interstate commerce. The public in the Orange market area may buy as many Jeeps as Waugh can sell. If Waugh does not persuade potential purchasers to buy Jeeps, they can buy competitive vehicles. Conversely, American [AMSC] and its competitors can supply the market with all the four-wheel drive vehicles that it will absorb. The statute may affect the structure of the retail market by shifting business from one out-of-state manufacturer to another. But, when a statute is otherwise valid, the commerce clause does not insulate this aspect of trade from state regulation. 592 F. 2d at 223; App. 28. (citation omitted).

In further support of the constitutionality of the statute, the Court of Appeals relied on this Court's analysis of a similar statute in *Fox*[9] and on an examination of the legislative history of the federal Dealers' Day in Court Act, 15 U. S. C. §§ 1221-1225 (1963). 592 F. 2d at 224; App. 29. *See also,* H. R. REP. No. 2850, 84th Cong., 2d Sess. (1956), reprinted in [1956] U. S. CODE CONG. & AD. NEWS 4596, 4603-04. *Cf. Continental T. V., Inc. v. GTE Sylvania, Inc.*, 433 U. S. 36 (1977).

Petitioner has failed to demonstrate any reason for this Court to reexamine the principles it has recently set forth in *Exxon* and *Fox* and which were properly applied by the Court of Appeals after a full consideration of the issues.

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9. *See* note 8 *supra.*

B. Petitioners Have Not Presented Any Reasons to Warrant Reexamination of the Principles Set Forth by This Court.

Petitioner attempts to raise this case to a level warranting review by arguing that the decision below presents a constitutional question of great importance which has not been, but should be settled by this Court. Petitioner attempts to create a conflict among state court decisions considering the constitutionality of statutes similar to the Virginia statute by citing *Gen. GMC Trucks, Inc. v. Gen. Motors Corp.*, 239 Ga. 373, 237 S. E. 2d 194, 196-198 (1977) *cert. denied*, 434 U. S. 996 (1977), and *Tober Foreign Motors v. Reiter Oldsmobile, Mass.*, 381 N. E. 2d 908 (1978). Pet. 8.

Petitioner, however, fails to acknowledge that *General Motors* was decided on June 23, 1977, prior to the opinions of this Court in *Fox* and *Exxon*. It must be assumed that the Supreme Court of Georgia, if the matter were presently before it, would decide the case consistently with this Court's recent decisions. Petitioners cannot create a conflict among state courts by assuming that the state courts would not follow this Court's interpretations of the United States Constitution.

Any assumption that this Court's decisions would not be followed is rebutted by recent state court decisions rejecting similar challenges under *Exxon* and *Fox*. *See, e.g., Chrysler Corp. v. New Motor Vehicle Bd.*, 153 Cal. Rptr. 135, 139-141 (1979) (applying *Fox* and *Exxon* to uphold the constitutionality of a statute similar to the Virginia statute); *Tober Foreign Motors, Inc. v. Reiter Oldsmobile, Inc.*, — Mass. — , 381 N. E. 2d 908, 913-15 (1978) (applying *Exxon* to hold a Massachusetts statute similar to the Virginia statute constitutional under the Commerce Clause). *Cf. Midcal Aluminum, Inc. v. Rice,*

153 Cal. Rptr. 757, 759 (1979). Thus, no conflict, real or assumed, exists requiring resolution by this Court.

CONCLUSION.

For the reasons stated, the Petition for Writ of Certiorari of the Court of Appeals for the Fourth Circuit should be denied.

Respectfully submitted,

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July 2, 1979

CERTIFICATE OF SERVICE.

I hereby certify, as a member of the Bar of the Supreme Court of the United States, that on this second day of July, 1979, three copies of the Brief for Respondents, Virginia Division of Motor Vehicles and Vern L. Hill, In Opposition were mailed, first class postage prepaid, to John F. Kay, Jr., Esquire, Mays, Valentine, Davenport & Moore, Post Office Box 1122, Richmond, Virginia 23208, Counsel for petitioner and to David F. Peters, Esquire, Hunton & Williams, Post Office Box 1535, Richmond, Virginia 23212, counsel for respondent Virginia Automobile Dealers Association.

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